

## **REMARKS**

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks.

### **Regarding the Response to Arguments**

Applicant appreciates the Examiner's more detailed explanation of reasoning regarding the present claims as presented in section 2 of the above Final Office Action. While Applicant appreciates the Examiner's position with regard to the meaning of "comprises", the examination of the claims must take into consideration each and every word of the claims. MPEP 2143.03 requires that all claim features must be considered during examination. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

The undersigned concurs that the use of "comprises" clearly means that further actions could take place and still be within the boundaries of the claims. However, the explicitly claimed actions have to take place as claimed.

In the present case, the claim language used was intended to mean that the determination that a channel is not PSIP is the sole determination resulting in a conclusion that the channel is MPEG. While this was believed clear, the claims have been amended to assure further clarity in this point.

In the present case, the claim language was also intended to define the bounds of the three tables that are used for storing digital channel information. The claims have also been amended to clarify this point and to further define the contents of the three tables. In particular, the first table data entries are now explicitly claimed to "consist of" only major channel number and attribute (to paraphrase without intent of limitation). By way of reference, the tables claimed and discussed as Tables 2, 3 and 4 as shown in Applicants' specification at page 10. The claims as amended clearly call out details of the specific structure of the three tables as shown on page 10. Such structure of three tables and are neither taught nor suggested by the cited art and provide for an extremely efficient tuning method that is not contemplated by the five or more tables used by the cited references.

Finally, the Office explains that the result of using a single table may be true, it is not claimed and carries no weight (to paraphrase). Applicants have amended the claim to explicitly conclude that this is the case. This advantage is not trivial, in that the tuning process can be speeded up substantially by use of the single table in tuning.

It is noted that Klopfenstein, at col. 6, line 56 through col. 7, line 4, merely refers to updating an internal database without reference to any specific table structure, and certainly not the table structure claimed.

Wasilewski, col. 7, lines 45-49 is cited in the explanation, but appears to only define that a TSID defines the number of the transport stream and is used as key to the NIT where the frequency carrying the desired channel is found.

Jerding, col. 5, lines 48-67, and col. 6, lines 42-65 and col. 11, lines 39-57 is asserted to teach using multiple lookup tables. However, the Office has failed to describe use of the explicit arrangement of tables as claimed. It is noted in particular that both Jerding and Wasilewski show use of five separate tables. Moreover, Jerding asserts at col. 5, line 48 that the information includes “at least five different tables”. Applicants’ efficient table structure is clearly not contemplated by or obvious in view of the cited art.

In accord with *Graham v. John Deere*, 383 U. S. 1 (1966), the Supreme Court set out a framework for applying the statutory language of §103 in making an objective analysis of obviousness. The Court stated that “under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” This criteria was reaffirmed in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (S.Ct.2007), 127 S.Ct.1727 (2007). It should be noted that in this case, the Supreme Court did not throw out the so-called teaching, suggestion, motivation test (TSM), but rather indicated that is should not be applied rigidly since other tests could be used to determine obviousness.

In accord with this analysis, some of the differences between the claims and the cited art have been enumerated above (other differences also exist). In order to establish *prima facie* obviousness, it is the burden of the Office to identify each element of the claims in the prior art and further, to provide an explicit analysis as to the reasoning to support a conclusion of obviousness. (See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) - “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). In the present case, the cited art fails to provide the claim elements described when each and every word of the claims is properly considered. Further, the Office Action is devoid of any articulated reasoning as to why one of ordinary skill in the art would find the claims as a whole including the details of each of the no more than three tables to be obvious in the absence of the table structure enumerated in the claims that are not present in the cited art, nor has the Office provided any articulated reasoning adequate to address each of the claimed table features. Hence, it is submitted that the claims are patentable. Reconsideration and allowance are respectfully requested.

In view of the Examiner’s explanation and the amendments presented above, it is believed clear that the claims as amended are not obvious in view of the cited art. The cited art fails to call out the explicit table structure for three tables as claimed and fails to suggest these three simple tables by virtue of teaching that at least five tables are needed. Applicants’ table structure results in more efficient tuning with a simpler table structure that is not contemplated by the cited art. Reconsideration and allowance are respectfully requested.

### **Concluding Remarks**

The undersigned additionally notes that other distinctions exist between the cited art and the claims. However, in view of the clear distinctions pointed out above, further discussion is believed to be unnecessary at this time. Failure to specifically address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner’s position or an admission of any sort.

### **Interview Request**

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned again respectfully requests the courtesy of an interview in order to expedite the present prosecution. The undersigned can be reached at the telephone number below.

Respectfully submitted,

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